

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of) 2016 FEB 10 AM 8: 40
) CASE CLOSURE UNDER THE
MUR 6910) ENFORCEMENT PRIORITY
New Jersey for the People) SYSTEM
) CELA

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include, without limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances and where appropriate, to find no reason to believe that a violation occurred. The Office of General Counsel has determined that MUR 6910 should not be referred to the Alternative Dispute Resolution Office.¹

For the reasons set forth below, the Office of General Counsel recommends that the Commission find no reason to believe that New Jersey for the People violated the Act and Commission regulations.

The Complainant, Jim Carlucci, alleges that New Jersey for the People ("NJFTP"), an "Independent Expenditure Committee," has "failed to file properly timely reports" with the Federal Election Commission ("FEC") since February 26, 2013.² Compl. at 1. The Complaint contends

¹ The EPS rating information is as follows:
Filed: February 3, 2015.

Complaint Filed: December 31, 2014. Response

² NJFTP's FEC committee identification number is C90014077.

1 that the Committee for Economic Growth and Social Justice ("CEGSJ"), also an independent
2 expenditure-only political committee ("IEOPC") registered with the Commission, reported a
3 \$10,000 contribution from NJFTP, allegedly received on May 8, 2014. *Id.* The Complaint implies
4 that this contribution was additionally required to be reported by NJFTP.³

5 In its Response, NJFTP maintains that it is a State Political Action Committee registered in
6 the State of New Jersey, and asserts that it files all required reports with the New Jersey Division of
7 Elections. Resp. at 1. NJFTP further states that it filed 24-hour reports with the FEC during the
8 2012 election cycle, disclosing electioneering communications.⁴ *Id.*

9 When an individual's or committee's aggregate independent expenditures reach or exceed
10 \$1,000 with respect to a given election, and are made fewer than 20 days, but more than 24 hours,
11 before an election, the independent expenditure must be reported to the FEC within 24 hours of the
12 time the communication is publicly distributed or otherwise publicly disseminated. 52 U.S.C.
13 § 30104(c)(1), (g)(1); 11 CFR § 109.10(d). In addition, any person other than a federal political
14 committee must file a report with the FEC on FEC Form 5 at the end of the first reporting period in
15 which independent expenditures with respect to a given election aggregate more than \$250 in a
16 calendar year. 11 CFR § 109.10(b). The available information indicates that NJFTP filed the
17 required independent expenditure reports with the FEC in 2012 and 2013. Moreover, NJFTP filed
18 its required Form 5 (Year-End Report) on February 26, 2013. There is no indication that any

³ The complainant also alleges that NJFTP's 2012 Year-End Report was filed only in response to a Request for Additional Information ("RFAI") from the Reports Analysis Division regarding its failure to file. Compl. at 1-2.

⁴ It appears that the Committee mischaracterized their expenditures in their response as electioneering communications where in fact they were reported as independent expenditures. Resp. at 1. The available information shows that NJFTP filed 24 Hour Independent Expenditure Reports on October 28, 2012, and November 2, 2012, and filed a 2012 Year-End Report on February 26, 2013. FEC records indicate that on February 20, 2012, the Reports Analysis Division sent a RFAI reminding NJFTP to file a 2012 Year-End Report.

1 further expenditures were made since that time that would have required NJFTP to file a Form 5
2 with the FEC.

3 CEGSJ registered with the Commission as an independent expenditure-only political
4 committee, and, therefore, could accept unlimited contributions from individuals, political
5 committees, corporations, and labor organizations.⁵ Here, CEGSJ was permitted to receive, and
6 was required to report, the contribution from NJFTP. However, because the contribution from
7 NJFTP to CEGSJ was by definition not an independent expenditure, NJFTP was not subsequently
8 obligated to report the contribution on a FEC Form 5. Accordingly, we recommend that the
9 Commission find no reason to believe that NJFTP violated 52 U.S.C. § 30104(c)(1), (g)(1).

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⁵ See Advisory Op. 2010-11 (Commonsense Ten) (an IEOPC may accept unlimited contributions from individuals, political committees, corporations, and labor organizations); *SpeechNow.org v. FEC*, 599 F.3d 686, 692-96 (D.C. Cir. 2010) (*en banc*) (individuals may contribute without limit to political committees that make only independent expenditures).

RECOMMENDATIONS

1. Find no reason to believe that New Jersey for the People violated 52 U.S.C. § 30104(c)(1), (g)(1);
2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
3. Close the file.

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2/10/16
Date

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